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**DEPARTMENT OF HOMELAND SECURITY
U.S. Customs and Border Protection**

Test Concerning Entry of Section 321 Low-valued Shipments Through Automated Commercial Environment (ACE)

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: This document announces that U.S. Customs and Border Protection (CBP) is conducting a test of new functionalities related to the electronic entry filing for low-valued shipments through the Automated Commercial Environment (ACE). The Section 321 *de minimis* administrative exemption admits free from duty and tax, shipments of merchandise (other than bona-fide gifts and certain personal and household goods) imported by one person on one day having an aggregate fair retail value in the country of shipment of not more than \$800. During this test, an owner, or purchaser of a Section 321 low-valued shipment or, when appropriately designated, a customs broker appointed by an owner, purchaser, or consignee, will be able to file a new type of informal entry in ACE for Section 321 low-valued shipments. Section 321 low-valued shipments subject to Partner Government Agency (PGA) requirements will also be able to be entered using this new Section 321 informal entry type. This notice provides a description of the test, the requirements for filing the new informal entry type, and the regulations that will be waived for test participants. CBP invites public comment concerning the test program. The test will be known as the ACE Entry Type 86 Test.

DATES: The test will commence no earlier than September 28, 2019 and will continue until concluded by an announcement published in the *Federal Register*. Comments will be accepted throughout the duration of the test.

ADDRESSES: Comments concerning this notice and any aspect of this test may be submitted at any time during the test via email to OTENTRYSUMMARY@cbp.dhs.gov. In the subject line of your email, please indicate, “Comment on the ACE Entry Type 86 Test.”

FOR FURTHER INFORMATION CONTACT: Randy Mitchell, Director, Commercial Operations, Revenue and Entry Division, Office of Trade, U.S. Customs and Border Protection, 202-325-6532, Randy.Mitchell@cbp.dhs.gov.

SUPPLEMENTARY INFORMATION: This document announces that U.S. Customs and Border Protection (CBP) is conducting a test to allow Section 321 low-valued shipments, including those shipments subject to Partner Government Agency (PGA) data requirements, to be entered by filing a new type of informal entry electronically in the Automated Commercial Environment (ACE). This will allow CBP to address the growing volume of Section 321 low-valued shipments resulting from the global shift in trade to an e-commerce platform, test the new functionality in ACE, facilitate cross-border e-commerce, and allow Section 321 low-valued shipments subject to PGA data requirements to utilize a Section 321 *de minimis* entry process for the first time.

I. Administrative Exemption for Section 321 Low-Valued Shipments

Section 321(a)(2)(C) of the Tariff Act of 1930 (19 U.S.C. 1321(a)(2)(C)), as amended by the Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA), Section 901, Public Law 114-125, 130 Stat. 122 (19 U.S.C. 4301 note), authorizes CBP to provide an administrative exemption to admit free from duty and tax, shipments of merchandise (other than bona-fide gifts

and certain personal and household goods) imported by one person on one day having an aggregate fair retail value in the country of shipment of not more than \$800. The regulations issued under the authority of section 321(a)(2)(C) are set forth in sections 10.151 and 10.153 of title 19 of the Code of Federal Regulations (19 CFR 10.151 and 10.153).

Section 10.151 of the regulations implements the administrative exemption provided for in 19 U.S.C. 1321. A shipment of merchandise valued at \$800 or less, which qualifies for informal entry under 19 U.S.C. 1498 and meets the requirements in 19 U.S.C. 1321(a)(2), including 19 CFR 10.151, is referred to in this document as a “Section 321 low-valued shipment.” Unless a CBP official has reason to believe that a Section 321 low-valued shipment fails to comply with any pertinent law or regulation, section 10.153 sets forth the guidance to be applied by a CBP officer in determining whether an article or parcel shall be exempted from duty and tax under section 10.151 and qualify as a Section 321 low-valued shipment. Accordingly, consolidated shipments addressed to one consignee shall be treated as one importation; alcoholic beverages and cigars (including cheroots and cigarillos) and cigarettes containing tobacco, cigarette tubes, cigarette papers, smoking tobacco (including water pipe tobacco, pipe tobacco, and roll-your-own tobacco), snuff, or chewing tobacco are not exempt; any merchandise subject to antidumping and countervailing duties is not exempt; any merchandise of a class or kind provided for in any absolute or tariff-rate quota, whether the quota is open or closed, is not exempt; and, there is no exemption from any tax imposed under the Internal Revenue Code that is collected by other agencies on imported goods.

“Release from manifest” process for Section 321 low-valued shipments

Pursuant to 19 CFR 10.151, merchandise subject to the Section 321 administrative exemption shall be entered under informal entry procedures unless formal entry is deemed

necessary. The relevant informal entry procedures for Section 321 low-valued shipments are set forth in 19 CFR 128.24 and 19 CFR Part 143, Subpart C. A Section 321 low-valued shipment may be entered, using reasonable care, by the owner, purchaser, or consignee of the shipment, or, when appropriately designated by one of these persons, a customs broker licensed under 19 U.S.C. 1641. *See* 19 CFR 143.26(b).

Section 321 low-valued shipments may be entered by presenting the bill of lading or a manifest listing each bill of lading. *See* 19 CFR 143.23(j)(3). This type of informal entry is termed the “release from manifest” process. Generally, such shipments are released from CBP custody based on the information provided on the manifest or bill of lading. Such information may be provided by express consignment operators, carriers, or brokers. The following information must be provided as part of the “release from manifest” process: the country of origin of the merchandise; shipper name, address and country; ultimate consignee name and address; specific description of the merchandise; quantity; shipping weight; and value. *See* 19 CFR 128.21(a) and 19 CFR 143.23(k). No Harmonized Tariff Schedule of the United States (HTSUS) subheading or entry summary is required on an advance manifest for Section 321 low-valued shipments. *See* 19 CFR 143.23(k) and 19 CFR 128.24(e).

A Section 321 low-valued shipment is not exempt from PGA requirements. Many agencies do not have *de minimis* exemptions for their PGA reporting requirements, and require strict accountability of imported goods for national security, health and safety reasons and to identify specific shipments of potential violative products for reporting or enforcement targeting purposes. Low-valued shipments may also require the payment of applicable PGA duties, fees or applicable excise taxes collected by other agencies. These shipments that have PGA data reporting requirements, or require the payment of any duties, fees, or taxes may not benefit from

the use of a less complex Section 321 *de minimis* entry process and must currently be entered using the appropriate informal or formal entry process to ensure that the PGA requirements are met. All shipments subject to PGA requirements are currently ineligible for entry under the “release from manifest” process.

II. Establishment of an Electronic Entry Process for Section 321 Low-valued Shipments Through ACE

This document announces CBP’s plan to conduct a test to authorize a new Section 321 *de minimis* entry process for Section 321 low-valued shipments in ACE through the development of a new informal entry type “86.” This test will be called the ACE Entry Type 86 Test. The ACE Entry Type 86 Test creates a means for Section 321 low-valued shipments, including those subject to PGA data requirements, to benefit from the use of a Section 321 *de minimis* entry process for the first time. Prior to the development of entry type “86,” Section 321 low-valued shipments subject to PGA requirements were required to be entered using the more complex informal entry type “11” or formal entry. The ACE Entry Type 86 Test will provide a less complex entry and release process for Section 321 low-valued shipments, including those subject to PGA data requirements, and will expedite the clearance of compliant Section 321 low-valued shipments into the United States through the use of ACE. Merchandise imported by mail is excluded from the ACE Entry Type 86 Test and may not be entered under the entry type “86.”

In developing the ACE Entry Type 86 Test, CBP has coordinated with the Commercial Customs Operations Advisory Committee (COAC), trade industry representatives, and PGAs, and has considered the public comments received from the “Administrative Exemption on Value Increased for Certain Articles” interim final rule (Administrative Exemption IFR). On August 26, 2016, CBP published the Administrative Exemption IFR in the *Federal Register* (81 FR

58831), which amended the CBP regulations to implement section 901 of TFTEA by raising the value of the Section 321 administrative exemption from \$200 to \$800, and solicited comments regarding the collection of data on behalf of PGAs for shipments valued at \$800 or less. CBP received eight public comments. A more detailed analysis of the comments received and CBP's responses to the public comments will be addressed at a later date. In summary, of the eight public comments, seven addressed the collection of data for Section 321 low-valued shipments. Among these seven comments, five commenters encouraged the automated clearance of Section 321 low-valued shipments using ACE and the collection of PGA data using a Section 321 *de minimis* entry process.

Five of the commenters encouraged CBP to automate Section 321 clearance using ACE. These commenters pointed out that automating Section 321 clearance through ACE will increase CBP's ability to provide risk-based targeting of inbound shipments, assure supply chain security, enforce trade laws, and protect intellectual property rights. Various ACE clearance processes were suggested by the commenters, including using the Automated Broker Interface (ABI) to allow the owner, purchaser, consignee, or designated customs broker to file the necessary information.

Most commenters also asserted that any ACE Section 321 clearance process should allow for the submission of PGA data. One commenter pointed out that unless Section 321 low-valued shipments subject to PGA requirements could be cleared under a Section 321 *de minimis* entry process, the *de minimis* exemption would be of little use to the greater public because a large percentage of these imported shipments are regulated by PGAs. Commenters also noted that the primary purpose of increasing the Section 321 administrative exemption was to benefit e-

commerce micro and small businesses engaging in global trade and the vast majority of these businesses lack the capacity to comply with complex trade rules.

CBP believes that the development of the new entry type “86” effectively addresses the public comments; facilitates legitimate trade while also allowing CBP to enhance its targeting capabilities; ensures that PGAs can identify potential violative products for reporting or enforcement targeting purposes while allowing filers to utilize a less complex entry process; and decreases the challenges faced by CBP in targeting, locating and examining Section 321 low-valued shipments by collecting necessary data. Processing Section 321 low-valued shipments in ACE utilizes the “single window” system, thereby granting all government agencies involved with the importation of goods into the United States access to data concerning the shipments and gives the trade a single mechanism to enter data.

Authorization for the Test

The test described in this notice is authorized pursuant to 19 CFR 101.9(a), which grants the Commissioner of CBP the authority to impose requirements different from those specified in the CBP regulations for purposes of conducting a test program or procedure designed to evaluate the effectiveness of new technology or operational procedures regarding the processing of passengers, vessels, or merchandise.

The ACE Entry Type 86 Test will allow CBP to test ACE functionality, and to test the new operational procedures involved with the new entry type, including any challenges that may result and any coordination that is necessary with PGAs. Additionally, the test will allow CBP to determine if entry type “86” effectively addresses the threats and complexities resulting from the

global shift in trade to an e-commerce platform, the vast increase in Section 321 low-valued shipments, and facilitates cross-border e-commerce.

The process to file an entry type “86”

A Section 321 low-valued shipment may be entered by the owner, purchaser, or consignee of the shipment, or, when appropriately designated by one of these persons, a customs broker licensed under 19 U.S.C. 1641. *See* 19 CFR 143.26(b). For purposes of the ACE Entry Type 86 Test, CBP is deviating from this regulation and requiring that consignees intending to file an entry type “86” appoint a customs broker to act as the importer of record (IOR) for the shipment. Customs brokers must be designated to enter qualifying shipments through a valid power of attorney, and must comply with all other applicable broker statutory and regulatory requirements. *See* 19 CFR 141.46; *see e.g.*, 19 U.S.C. 1641; 19 U.S.C. 1484; 19 CFR Part 111; 19 CFR Part 141. The filing of entry type “86” is considered “customs business” under 19 U.S.C. 1641.¹

To participate in this test, an owner, purchaser, or customs broker appointed by an owner, purchaser, or consignee will file an informal entry type “86” in ACE through ABI. ABI allows participants to electronically file all required import data with CBP, and transfers that data into ACE. To participate in ABI, a filer must meet the requirements and procedures set forth in 19

¹ Pursuant to 19 U.S.C. 1641, “customs business” is defined as those activities involving transactions with CBP concerning the entry and admissibility of merchandise, its classification and valuation, the payment of duties, taxes, or other charges assessed or collected by CBP on merchandise by reason of its importation, or the refund, rebate, or drawback of those duties, taxes, or other charges. “Customs business” also includes the preparation of documents or forms in any format and the electronic transmission of documents, invoices, bills, or parts thereof, intended to be filed with CBP in furtherance of such activities, whether or not signed or filed by the preparer, or activities relating to such preparation, but does not include the mere electronic transmission of data received for transmission to CBP.

CFR Part 143, Subpart A, and must meet the technical requirements set forth in the Customs and Trade Automated Interface Requirements (CATAIR).²

The test is open to all owners, purchasers, consignees, and designated customs brokers of Section 321 low-valued shipments, including those subject to PGA requirements, imported by all modes of cargo transportation. CBP encourages all eligible parties to participate in this test to test the functionality of the new entry type. Importers of Section 321 low-valued shipments that do not contain any PGA data requirements may continue to utilize the “release from manifest” process or may utilize the ACE Entry Type 86 Test.

When filing an entry type “86,” a bond and entry summary documentation are not required. Under entry type “86,” the importing party is exempt from payment of the harbor maintenance tax and merchandise processing fee for merchandise released as a Section 321 low-valued shipment. *See* 19 CFR 24.23(c)(1)(v) and 24.24(d)(3). However, any merchandise that is not exempt from the payment of any applicable PGA duties, fees, or taxes imposed under applicable statute or regulation by other agencies on imported goods does not qualify as a Section 321 low-valued shipment. An entry type “86” filing that is determined to owe any duties, fees, or taxes will be rejected by CBP and must be re-filed using the appropriate informal or formal entry process. Additionally, CBP may require formal entry for any merchandise if it is deemed necessary for import admissibility enforcement purposes, revenue protection, or the efficient conduct of customs business. *See* 19 CFR 143.22.

An entry type “86” requires the owner, purchaser, or customs broker appointed by the owner, purchaser, or consignee to file the following data elements with CBP at any time prior to, or upon arrival, or up to 15 days after arrival of the cargo:

² *See* General Notice of August 26, 2008 (73 FR 50337) for a complete discussion on the procedures for obtaining an ACE Portal Account.

- (1) The bill of lading or the air waybill number;
- (2) Entry number;
- (3) Planned port of entry;
- (4) Shipper name, address, and country;
- (5) Consignee name and address;
- (6) Country of origin;
- (7) Quantity;
- (8) Fair retail value in the country of shipment;
- (9) 10-digit HTSUS number;
- (10) IOR number of the owner, purchaser, or broker when designated by a consignee (conditional).

The IOR number is a conditional ACE Entry Type 86 Test data element and is required when the shipment is subject to PGA data reporting requirements. The IOR number provided must be that of the shipment's owner, purchaser, or broker when designated by a consignee.

Upon receipt of the data in an entry type "86" filing, CBP will determine whether the shipment is subject to PGA data reporting requirements. Any PGA data reporting requirements would be satisfied by the PGA Message Set and the filing of any supporting documentation via the Document Image System (DIS). The PGA Message Set enables the trade community to electronically submit all data required by the PGAs only once to CBP, eliminating the necessity for the submission and subsequent manual processing of paper documents, and makes the required data available to the relevant PGAs for import and transportation-related decision making. See the December 13, 2013 *Federal Register* notice (78 FR 75931) for a further

discussion of the PGA Message Set and the October 15, 2015 *Federal Register* notice (80 FR 62082) for a further discussion of DIS.

A “CBP release” message indicates that CBP has determined that the Section 321 low-valued goods may be released from CBP custody. All merchandise released by CBP is released conditionally and remains subject to recall through the issuance of a Notice of Redelivery. Merchandise that is regulated by one or more PGAs may not proceed into commerce until CBP releases the merchandise and all PGAs that regulate the merchandise have issued a “may proceed” message.

The definitions of the ACE data elements, the technical requirements for submission, and information describing how filers receive transmissions are set forth in the CATAIR guidelines for ACE, which may be found at <https://www.cbp.gov/trade/ace/catair>.

III. Waiver of Regulation Under the Test

For purposes of this test, 19 CFR 10.151 will be waived for test participants only insofar as the informal entry procedures for “release from manifest” are inconsistent with the requirements in this notice. Additionally, 19 CFR 128.21(a), 128.24(e), 143.23(j) and (k), and 143.26(b) will be waived for test participants to the extent such procedures are inconsistent with the requirements of this notice.

IV. Comments

All interested parties are invited to comment on any aspect of this test at any time. CBP requests comments and feedback on all aspects of this test, including the design, conduct and implementation of the test, in order to determine whether to modify, alter, expand, limit, continue, end, or fully implement this new entry process.

V. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), an agency may not conduct, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB. The collections of information for the ACE Entry Type 86 Test are included in an existing collection for CBP Form 3461 (OMB control number 1651-0024).

VI. Misconduct Under this Test

A test participant may be subject to civil and criminal penalties, administrative sanctions, or liquidated damages for any of the following:

- (1) Failure to follow the rules, requirements, terms, and conditions of this test;
- (2) Failure to exercise reasonable care in the execution of participant obligations; or
- (3) Failure to abide by applicable laws and regulations that have not been waived.

Dated: August 7, 2019.

Brenda B. Smith,
Executive Assistant Commissioner,
Office of Trade.

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